



## **SMALL BUSINESS ADMINISTRATION**

**[Docket No. SBA-2020-0041]**

### **Community Advantage Pilot Program Temporary Changes – Community Advantage Recovery Loans**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Temporary changes to Community Advantage Pilot Program and request for comments.

**SUMMARY:** The Community Advantage (CA) Pilot Program is a pilot program to increase SBA-guaranteed loans to small businesses in underserved areas. In response to the Coronavirus Disease 2019 (COVID-19) pandemic, SBA has developed a new, temporary CA loan product titled “Community Advantage Recovery Loans” (CA Recovery Loans) for eligible CA Lenders to provide technical and financial assistance to assist small businesses located in underserved areas with retooling their business models for the COVID-19 environment and building financial resiliency against potential future disruptions. SBA is issuing this document to provide the specific requirements for CA Recovery Loans.

**DATES:** The changes to the CA Pilot program identified in this document take effect [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. CA Recovery Loans can be approved through September 27, 2020 and must be fully disbursed no later than October 1, 2020.

*Comment Date:* Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SBA docket number SBA-2020-0041 through the Federal eRulemaking Portal: <https://www.regulations.gov/>.

Follow the instructions for submitting comments.

SBA will post all comments on <https://www.regulations.gov/>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov/>, please send an email to [communityadvantage@sba.gov](mailto:communityadvantage@sba.gov).

Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Chief, Microenterprise Development Division, or Rosemarie Drake, Chief, 7(a) Loan Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, (202) 205-7001, [daniel.upham@sba.gov](mailto:daniel.upham@sba.gov) or (202) 619-1674, [rosemarie.drake@sba.gov](mailto:rosemarie.drake@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

On March 13, 2020, President Trump declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants,

bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

As part of its efforts to increase the number of SBA-guaranteed 7(a) loans made to small businesses in underserved markets, on February 18, 2011, SBA issued a notice and request for comments introducing the CA Pilot Program (76 FR 9626). That notice provided an overview of the CA Pilot Program requirements and, pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified or waived as appropriate certain regulations which otherwise apply to 7(a) loans for the CA Pilot Program.

Subsequent notices have made changes to the CA Pilot Program to improve the program experience for participants, improve their ability to deliver capital to underserved markets, and appropriately manage risk to the Agency. These notices were issued on the following dates: September 12, 2011 (76 FR 56262), February 8, 2012 (77

FR 6619), November 9, 2012 (77 FR 67433), December 28, 2015 (80 FR 80872), September 12, 2018 (83 FR 46237), and March 2, 2020 (85 FR 12369).

SBA is issuing this document to establish a new, temporary CA loan product in response to the COVID-19 emergency. CA Recovery Loans will be available to small businesses located in underserved markets from certain existing CA Lenders through September 27, 2020. CA policies and regulatory waivers apply to CA Recovery Loans, except as outlined in this Notice. The policies and regulatory waivers described below apply only to CA Recovery Loans. Other CA loans continue to be governed by the existing CA Loan Program Requirements.<sup>1</sup>

## 2. Comments

Although the changes are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], comments are solicited from interested members of the public. Comments must be submitted on or before the deadline for comments listed in the DATES section. SBA will consider these comments and the need for making any revisions as a result of these comments.

## 3. Community Advantage Recovery Loans

### *a. Overview*

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency. Under section 1112 of the CARES Act, SBA will provide debt relief to borrowers in the 7(a) (including the CA Pilot Program), 504, and Microloan Programs. As discussed more fully below, through

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<sup>1</sup> “CA Loan Program Requirements” means Loan Program Requirements as defined in 13 CFR 120.10, and the requirements contained in the Federal Register notices governing the pilot and the Community Advantage Participant Guide, as amended from time to time.

the CA Recovery Loans, SBA intends to leverage this authority to provide debt relief to borrowers with technical and financial assistance to maximize the assistance available to borrowers in underserved markets.

SBA's authority under section 1112, as further described below, is in effect for loans made through September 27, 2020, which will be the final day for the approval of CA Recovery Loans.

*b. Eligible Lenders*

In light of the potential risks associated with CA Recovery Loans and the short period of time during which CA Recovery Loans may be made, only certain lenders that are already participating in the CA Pilot Program will be eligible to make CA Recovery Loans. Several key metrics have been used to identify eligible lenders, including CA loan volume, portfolio performance metrics and most recent lender review results. Within 5 business days of the publication of this document, SBA will notify existing CA Lenders that are eligible to make CA Recovery Loans (referred to in this Notice as "CA Recovery Lenders") and provide instructions on how to opt in if they choose to participate. Once a CA Recovery Lender has opted in, it will be able to enter loans in ETRAN as a CA Recovery Loan. Other CA Lenders may refer and/or package loans for CA Recovery Lenders for a fee, as described in paragraph e. below.

*c. CA Recovery Loan Terms and Conditions*

All CA Recovery Loans must be made to small businesses located in underserved markets, as defined in the CA Participant Guide available on SBA's website at <https://www.sba.gov/sites/default/files/2020-06/CA%20Guide%20Version%206%20FINAL%20508%2006-01-20.pdf>, and must be

accompanied by technical assistance (TA) provided to the borrower by or on behalf of the CA Recovery Lender. The TA is for the purpose of assisting the borrower to build financial resiliency against future business disruptions and must be for a minimum of 15 hours. The TA may begin 30 days before loan approval and must be completed during the first six months of the CA Recovery Loan term. The cost of the technical assistance is to be paid out of the extraordinary servicing fee described in paragraph d. below. No other fees may be charged by the lender on CA Recovery Loans, except for necessary out-of-pocket expenses, such as filing or recording fees, under 13 CFR 120.221(c).

All CA Recovery Loans must be approved by September 27, 2020 and must be fully disbursed no later than October 1, 2020. The minimum loan term for a CA Recovery Loan is five years.

All other loan terms and conditions for CA Recovery Loans are the same as the terms and conditions for other CA loans, as set forth in the CA Loan Program Requirements. CA Recovery Lenders are reminded that they must maintain adequate loan loss reserves to cover potential losses arising from defaulted CA loans, including any CA Recovery Loans.<sup>2</sup>

*d. Allowable Extraordinary Servicing Fee for CA Recovery Loans and Technical Assistance Requirement*

For CA Recovery Loans only, SBA is modifying the requirements of 13 CFR 120.221(b) to permit a CA Recovery Lender to charge up to \$2,500 or nine percent of the

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<sup>2</sup> As set forth in section VI of the CA Participant Guide (ver. 6.0, effective June 15, 2020), the Loan Loss Reserve Account must equal no less than 5% of the outstanding balance of the unguaranteed portion of the CA Lender's CA loan portfolio and an additional 5% reserve amount is required to be maintained on the guaranteed portion of each CA loan that is sold into the secondary market.

amount of the CA Recovery Loan, whichever is greater, as an extraordinary servicing fee to cover the cost of the required technical assistance provided by or on behalf of the CA Recovery Lender to each CA Recovery Loan borrower. Such TA is to be tailored to the needs of the particular borrower and may include retooling the borrower's business model for a COVID-19 environment, shifting to an online presence, building cash reserves, and expense reduction strategies. As indicated above, the CA Recovery Lender must ensure that each CA Recovery Loan borrower receives, at a minimum, 15 hours of TA, which may begin 30 days prior to loan approval and must be completed during the first six months of the CA Recovery Loan term.

While SBA will not require the CA Recovery Lender to obtain SBA's prior written approval of these extraordinary servicing fees as is normally required under 13 CFR 120.221(b), the CA Recovery Lender must document all TA provided to a CA Recovery Loan borrower in the loan file. SBA will review this documentation when conducting lender oversight activities or, in the event of default, at time of guaranty purchase. SBA may deny liability on the guaranty if the TA is not provided or the CA Recovery Lender is unable to document that the TA was provided. In addition, SBA may seek repayment of the extraordinary servicing fee from the CA Recovery Lender if the TA was not provided or the CA Recovery Lender is unable to document that the TA was provided. No additional service and packaging fees will be permitted to be charged under section 120.221(a) on CA Recovery Loans.

An extraordinary servicing fee of up to \$2,500 or nine percent of the CA Recovery Loan amount, whichever is greater, is in recognition that CA Recovery Loans will require

more engagement and resources on the part of the lender than other loans<sup>3</sup>, including other CA loans. This extraordinary servicing fee would ordinarily be the responsibility of the borrower but will be paid by SBA under section 1112 of the CARES Act instead of the borrower (see paragraph f. below). In accordance with the requirements of section 1112, SBA will only pay the CA Recovery Lender an extraordinary servicing fee on CA Recovery Loans that are fully disbursed and are in regular servicing. After a loan is fully disbursed and reported to the Fiscal Transfer Agent on the 1502 report, SBA will pay the extraordinary servicing fee to the CA Recovery Lender. SBA will provide additional guidance with details on the method of payment.

*e. CA Recovery Lenders and Use of Agents*

CA Recovery Lenders may enter into agreements with other mission-oriented organizations (including CA Lenders that are not eligible to make CA Recovery Loans), as well as depository and non-depository financial institutions, to act as loan referral agents and/or packagers, but may not use agents for other services (such as underwriting) on CA Recovery Loans. For CA Loan Program Requirements concerning the use of referral agents and packagers, see the CA Participant Guide, which can be found at [https://www.sba.gov/sites/default/files/2020-](https://www.sba.gov/sites/default/files/2020-06/CA%20Guide%20Version%206%20FINAL%20508%2006-01-20.pdf)

[06/CA%20Guide%20Version%206%20FINAL%20508%2006-01-20.pdf](https://www.sba.gov/sites/default/files/2020-06/CA%20Guide%20Version%206%20FINAL%20508%2006-01-20.pdf).

For CA Recovery Loans, SBA is modifying 13 CFR 103.5 to clarify the fees that a CA Recovery Lender may pay to an agent in connection with assistance provided on a CA Recovery Loan. As modified, an agent will be permitted to receive reasonable

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<sup>3</sup> Under the Paycheck Protection Program (PPP) authorized by section 1102 of the CARES Act, lenders are paid a 5% processing fee on PPP loans of up to \$350,000, with no technical assistance required on the part of the lender.



compensation from a CA Recovery Lender for referring and/or packaging a CA Recovery Loan application to the CA Recovery Lender, and the compensation may be contingent upon funding of the CA Recovery Loan. Referral and/or packaging fees paid by a CA Recovery Lender in connection with a CA Recovery Loan will not be permitted to exceed \$3,000 for all agent services provided in connection with the CA Recovery Loan. Based on the fact that only referral and/or packaging services will be provided to a CA Recovery Lender who will perform its own underwriting, SBA has determined that a ceiling of \$3,000 is reasonable for such services. The compensation paid for referral and/or packaging services must be paid by the CA Recovery Lender and may not be charged to the borrower. Any payment for referral and/or packaging must be reported by the CA Recovery Lender on SBA Form 159.

*f. Application of CARES Act Sec. 1112 Payments*

Under Section 1112 of the CARES Act, SBA will pay the principal, interest, and any “associated fees” that Borrowers owe on a covered loan in a regular servicing status to CA Lenders for a 6-month period. SBA issued two procedural notices to implement Section 1112: SBA Procedural Notice 5000-20020, effective April 16, 2020, and SBA Procedural Notice 5000-20023, effective April 29, 2020. In SBA Procedural Notice 5000-20020, SBA defined “associated fees” to include the extraordinary servicing fee authorized by 13 CFR 120.221(b). For CA Recovery Loans, SBA “associated fees” will include the extraordinary servicing fee paid to the CA Recovery Lender for technical assistance as described above in paragraph d. SBA believes that the technical assistance provided by or on behalf of the CA Recovery Lender to the borrower on a CA Recovery Loan, which must be completed by the end of the first six months of the loan term, is

similar to the services for which an extraordinary servicing fee is paid on other 7(a) loans under section 1112 of the CARES Act. All other provisions relating to Section 1112 payments apply to CA Recovery Loans as set forth in SBA Procedural Notices 5000-20020 and 5000-20023, and any applicable amendments or future notices.

#### 4. General Information

The changes in this document are limited to CA Recovery Loans made under the CA Pilot Program only; they do not apply to other CA loans. Except as provided in this document, all other CA Loan Program Requirements, including regulatory waivers or modifications related to the CA Pilot Program, also apply to CA Recovery Loans. SBA may provide additional guidance, through SBA notices, which may also be published on SBA's website at <http://www.sba.gov/category/lender-navigation/forms-notices-sops/notices>. Questions regarding the CA Pilot Program may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at <http://www.sba.gov/about-offices-list/2>.

Authority: 15 U.S.C. 636(a)(25); Coronavirus Aid, Relief, and Economic Security Act, Publ. L. 116-136, and 13 CFR 120.3.

Dated: July 6, 2020

Jovita Carranza,  
Administrator

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